

Corrected Opinion Filed 12/02/22 by Clerk of the Supreme Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 203

Jonathan Lee Buchholz,

Plaintiff and Appellee

v.

Kristin Angela Overboe Buchholz,

Defendant and Appellant

No. 20220113

Appeal from the District Court of Barnes County, Southeast Judicial District,
the Honorable Jay A. Schmitz, Judge.

AFFIRMED IN PART AND REMANDED IN PART.

Opinion of the Court by Crothers, Justice.

Lynn Slaathaug Moen, Mayville, ND, for plaintiff and appellee.

Kristin A. Overboe, Fargo, ND, self-represented, defendant and appellant.

Buchholz v. Overboe
No. 20220113

Crothers, Justice.

I

[¶1] Kristin Overboe appeals from a divorce judgment, an order striking a declaration, an order denying a motion to amend the findings of fact, and an order striking additional filings and granting a protection order. We affirm the divorce judgment but remand for the district court to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when. We affirm the court’s order denying Overboe’s motion to amend findings of fact but vacate the April 25, 2022 order granting Jonathan Buchholz’s motion to strike and granting a protection order. We also grant Buchholz’s motion for attorney’s fees and award double costs.

II

[¶2] On November 17, 2020, Jonathan Buchholz filed a divorce from Kristin Overboe. On December 17 and 29, 2021, the district court conducted a two-day trial. On February 16, 2022, the court issued findings of fact, conclusions of law and a final judgment granting the divorce and distributing all marital property. On January 19, 2022 and February 11, 2022, additional hearings were held to clarify and modify the court’s findings. The latter hearings were held in response to filings by both parties, including the following:

- A January 18, 2022 motion from Overboe for reconsideration regarding accounting for and distribution of amounts received for crop sales.
- A February 3, 2022 letter from Buchholz requesting clarification of valuation findings of the marital estate.
- A February 11, 2022, declaration from Overboe claiming Buchholz’s February 3, 2022 letter did not comply with the “basic tenements of due process,” that there were several issues with the court’s decisions regarding property and valuations, a family trip Buchholz took, among

numerous other issues that had already been addressed or were irrelevant.

[¶3] On February 15, 2022, Buchholz filed a motion to strike Overboe's February 11, 2022 declaration. Buchholz's motion was granted on February 23, 2022. On February 16, 2022, the district court issued findings of fact, conclusions of law, and a judgment granting the divorce and distributing the marital property. On February 25, 2022, Overboe filed a motion to modify the findings of fact. On March 16, 2022, the court denied Overboe's motion. On April 6, 2022, Buchholz moved to have the court find Overboe's March 31, 2022 discovery requests duplicative, enter a protection order against Overboe, and strike from the record a number of Overboe's filings.

[¶4] On April 18, 2022, Overboe filed a notice of appeal from the divorce judgment, the findings of fact, a letter from Buchholz requesting clarification on marital property valuations, the order striking Overboe's February 11, 2022 declaration, the order striking Overboe's February 17, 2022 declaration and accompanying exhibits, and the order dismissing Overboe's February 25, 2022 motion to amend findings. On April 25, 2022, the district court granted Buchholz's April 6, 2022 motion to strike Overboe's filings and granted a protection order. On May 16, 2022, Overboe filed a notice of appeal from the order granting Buchholz leave to deposit funds and the order striking additional filings and granting a protection order.

III

[¶5] Overboe argues the judgment is invalid because the district court did not grant a divorce to both parties and because the judgment did not address remarriage as required by N.D.C.C. § 14-05-02. Overboe also argues the district court clearly erred in valuing and distributing the marital estate.

A

[¶6] Overboe argues the judgment is not valid because the district court did not grant a divorce to both parties. Under N.D.C.C. § 14-05-01, a marriage can be dissolved by death of one of the parties or by a judgment of a court of

competent jurisdiction. A divorce judgment can be granted for many reasons, including irreconcilable differences. N.D.C.C. §14-05-03.

[¶7] On February 16, 2022, the district court entered a divorce judgment based on irreconcilable differences. Overboe argues the judgment did not grant a divorce to both parties. In *Lessard v. Johnson*, Overboe made a similar argument on behalf of a client and this Court rejected it as “nonsensical and frivolous.” 2022 ND 32, ¶ 10, 970 N.W.2d 160. There, we concluded Overboe’s argument was “flagrantly groundless, devoid of merit and demonstrates persistence in the course of litigation evidencing bad faith.” *Id.* For the reasons stated in *Lessard*, we again reject the argument as frivolous.

B

[¶8] Overboe argues the divorce is invalid because it did not state as required by law whether, and if so when, the parties could marry. Section 14-05-02, N.D.C.C., provides:

“The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, *but neither party to a divorce may marry except in accordance with the decree of the court granting the divorce. It is the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when.* The court shall have jurisdiction to modify the decree of divorce at any time so as to permit one or both of the parties to marry, if the court deems it right.”

(Emphasis added.)

[¶9] We interpret statutes according to their plain terms. *See* N.D.C.C. § 1-02-02 (words understood in their ordinary sense); 1-02-03 (words and phrases construed according to the context and rules of grammar). Here, the plain language in N.D.C.C. § 14-05-02 prohibits remarriage “except in accordance with the decree of the court granting the divorce.” *Id.* The statute also imposes a “duty” on the court to direct “whether either or both of the parties shall be permitted to marry, and if so, when.” *Id.* This section requires that the district

court affirmatively address remarriage in every divorce judgment. *Id.* Therefore, although the divorce is valid, we remand for the district court to address remarriage as required by N.D.C.C. § 14-05-02.

C

[¶10] Overboe argues the district court erred in establishing a valuation date for marital property, in valuing marital property, and distributing marital property.

1

[¶11] During a divorce proceeding the district court must value the marital estate and equitably divide the property. *Schultz v. Schultz*, 2018 ND 259, ¶ 24, 920 N.W.2d 483. Before determining the value of the marital estate and distributing property, the court must determine a valuation date. N.D.C.C. § 14-05-24(1). This action was commenced in 2020 when N.D.C.C. § 14-05-24(1) specified that the valuation date for marital property is a date mutually agreed upon, if parties cannot agree the valuation date is the date of service of the summons and complaint or the date on which the parties separated, whichever comes first. Here, the district court used November 17, 2020, which was the date on the summons. In fact, the summons and complaint were served on Overboe on November 18, 2020. Overboe did not object to the date, and referred to it in the Joint 8.3 Property Listing and during cross-examination of Buchholz.

[¶12] The district court erred by using November 17, 2020 instead of using November 18, 2020 as the valuation date. However, under applicable law the district court did not err in using the summons date as the valuation date. Overboe makes no argument that she was prejudiced by the one day difference, or that it affected her substantial rights. We conclude the one day difference in valuation dates was harmless. N.D.R.Civ.P. 61 (“At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”).

[¶13] After establishing a valuation date, the district court must value the marital estate. “All property held by either party, whether held jointly or individually, is considered marital property[.]” *Tuhy v. Tuhy*, 2018 ND 53, ¶ 10, 907 N.W.2d 351. A court must determine the total value of the marital estate before making an equitable division of property. *Ulsaker v. White*, 2006 ND 133, ¶ 13, 717 N.W.2d 567. Valuations of marital property are findings of fact and will not be reversed unless clearly erroneous. *Berdahl v. Berdahl*, 2022 ND 136, ¶ 9, 977 N.W.2d 294. “A court’s valuations of marital property are not clearly erroneous if they are within range of the evidence presented.” *Id.* “A choice between two permissible views of the evidence is not clearly erroneous if the district court’s findings are based on either physical or documentary evidence, or inferences from other facts, or on credibility determinations.” *Lee v. Lee*, 2019 ND 142, ¶ 6, 927 N.W.2d 104. “The value a district court places on marital property depends on the evidence presented by the parties.” *Id.*

[¶14] Overboe argues the district court made multiple errors in its valuation of the marital property. As we more fully explain below, after our review of the record we conclude the district court’s findings were not induced by an erroneous view of the law, evidence exists to support them, and we are not left with a definite and firm conviction a mistake has been made.

[¶15] Overboe argues the district court erred by finding Buchholz brought \$1.2 million worth of property into their marriage. Buchholz and Overboe hired an appraiser for the land. Based on the appraisal, the court found: tract 1 was worth \$720,628, and tract 2 was worth \$483,749, totaling \$1,204,377. These tracts of land were purchased before the parties were married and Overboe’s name is not on these deeds. Overboe contends the court did not consider the debt on the land brought into the marriage, but fails to point to evidence supporting the claim. *See Eberhardt v. Eberhardt*, 2003 ND 199, ¶ 17, 672 N.W.2d 659 (Judges are not obligated to engage in unassisted searches of the record for evidence to support the litigant’s position.).

[¶16] Overboe argues the district court erred by finding Overboe's client funds of \$26,210 were part of the marital estate. The court did not add Overboe's client trust fund into the marital estate. The appraisal of Overboe's law firm states: "Accrued liabilities of \$26,210 are equal to client retainer balances representing unearned revenue as of December 31, 2020." The appraisal found the value of Overboe's law firm was \$334,000. This amount did not include the \$26,210 and the court agreed with the \$334,000 valuation.

[¶17] Overboe argues the district court erred by excluding \$557,432.75 worth of grain from the marital estate. During trial, there was extensive testimony on the crop values. Overboe's argument is about the value of crops sold prior to the valuation date, which would not be properly included in the marital estate. Buchholz argues and we agree that the value of proceeds from crops sold prior to the valuation date will be included in the marital estate as cash, assets, or debt reduction.

[¶18] Overboe argues the district court erred by excluding \$310,671.30 of prepaid farm chemical, seed and fertilizer from the marital estate. Overboe does not offer evidence supporting this argument, and it is unclear how she arrived at her valuation. The record indicates Buchholz purchased \$70,000 in seed prior to the valuation date and the court included it within the marital estate.

[¶19] Overboe argues the district court erred by not including two grain bins in the marital estate. Several other grain bins are located on the property. Overboe did not present evidence why the two bins should be included in the marital estate or their value. Buchholz testified these two bins have little value. The district court found the two grain bins had no value.

[¶20] Overboe argues the district court erred in valuing the parties' personal and household goods. The court found there was insufficient evidence to determine the valuation of personal and household goods, and they were not included in the valuation because they would likely have little impact on the total value.

[¶21] Overboe argues the district court erred by incorrectly determining the value of specific farm equipment including: a 2001 Case IH Magnum 290 MFWD, a 2011 Case IH combine, a Loftness spreader, a tilt bed trailer, and a skid steer loader. The court heard extensive testimony regarding ownership of the farm equipment between Buchholz, his brother and father, and its respective values. Upon review of the record, the district court's findings on ownership and valuations are within range of the evidence.

[¶22] Based on our review, the district court's valuation and asset ownership findings were not induced by an error of law and are supported by evidence. They are not clearly erroneous.

3

[¶23] Overboe argues the district court erred in its analysis of the *Ruff-Fischer* factors, specifically: duration of marriage, conduct of the parties, station in life, necessities and circumstances of the parties, and financial circumstances.

[¶24] “When a divorce is granted, the court shall make an equitable distribution of the property[.]” N.D.C.C. § 14-05-24(1). The *Ruff-Fischer* guidelines require the district court consider the following factors to make an equitable distribution: 1) age of the parties, 2) parties' earning ability, 3) duration of marriage, 4) conduct of the parties during marriage and parties' station in life, 5) necessities of each party, 6) health and physical condition of the parties, 7) parties' financial circumstances, and 8) any other matters that may be material. *Lee*, 2019 ND 142, ¶ 12. Distributions of marital property are also questions of fact and will not be reversed unless the court's findings are clearly erroneous. *Id.* at ¶ 6. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence we are left with a definite and firm conviction a mistake has been made. *Id.*

[¶25] Overboe argues the district court erred in finding the marriage was short-term. “The length of a marriage is a factor a district court must consider in determining the equitable division of the marital estate under the *Ruff-*

Fischer guidelines.” *Paulson v. Paulson*, 2021 ND 32, ¶ 24, 955 N.W.2d 92. We have made clear that no bright-line rule exists to distinguish between short and long-term marriages. *Id.* “Generally, a long-term marriage supports an equal division of marital assets, but the division need not be equal to be equitable. In a short-term marriage, the district court may distribute property based on what each party brought into the marriage.” *Id.*

[¶26] Overboe argues the district court should have viewed this as a long-term marriage by including the years the parties dated. The court determined the parties had a relatively short-term marriage of eight years. The court declined to include the time the parties dated because they did not cohabitate and consistently maintained separate finances, debts, and businesses. The district court expressed its reasons for finding the marriage was short term, and those reasons are supported by evidence adduced at trial.

[¶27] Overboe argues the district court erred in determining the misconduct of the parties contributed to the downfall of their marriage. The court found both parties did not treat each other well. Buchholz engaged in domestic violence and both parties engaged in verbal abuse. Both parties engaged in gambling that resulted in dissipated assets. The “evidence presented is such that the court could have reasonably concluded both parties must share responsibility for the failure of the marriage.” *Berdahl*, 2022 ND 136, ¶ 13. Therefore, the district court’s finding that the conduct of the parties contributed to the downfall of the marriage was not clearly erroneous.

[¶28] Overboe argues the district court erred in finding the parties continued to enjoy their upper middle-class lifestyle even after separation. The court also found each party can provide for him or herself. Overboe argues she has paid substantial attorney’s fees and must expend resources to re-establish the lifestyle she enjoyed when married. The same is true for both parties, and Overboe has not shown she is more affected than Buchholz. Therefore, the district court’s finding that both party’s life, circumstances, and necessities have continued to remain the same was not clearly erroneous.

[¶29] Based on the district court’s *Ruff-Fischer* analysis, the marital estate was distributed 65% to Buchholz, and 35% to Overboe, with Buchholz making a \$680,243 equalizing payment to Overboe. The court found the 65/35 split was equitable based on the \$1.2 million worth of land Buchholz owned before the marriage and the high amount of personal debt Overboe brought into the marriage. This distribution was based on the facts and evidence presented at trial, was not induced by an erroneous view of the law, and therefore was not clearly erroneous.

IV

[¶30] Overboe argues the district court abused its discretion by granting Buchholz’s motion to strike her February 11, 2022 declaration.

[¶31] *In Matter of Guardianship of S.M.H.*, 2021 ND 104, ¶ 24, 960 N.W.2d 811, we relied on N.D.R.Civ.P. 12(f) to uphold a district court’s order striking portions of a litigant’s affidavit. There, the district court found a party’s affidavit contained “redundant, impertinent, and scandalous” allegations against Lutheran Social Services. *Id.* “Additionally, the court determined the affidavit was immaterial because it was not submitted in response to or in support of a pending motion.” *Id.* at ¶ 25.

[¶32] Under N.D.R.Civ.P. 12(f), a district court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on motion by a party or on its own. *Collection Center, Inc. v. Bydal*, 2011 ND 63, ¶ 28, 795 N.W.2d 667. Courts have the authority to consider a motion to strike at any time. *Id.* at ¶ 31. We review a district court’s decision to strike under N.D.R.Civ.P. 12(f) for an abuse of discretion. *Collection Center, Inc.*, ¶ 29. A court “abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner or when its decision is not the product of a rational mental process leading to a reasoned determination.” *Id.*

[¶33] On February 11, 2022, Overboe filed a declaration with the district court. The issues covered by the declaration were either irrelevant to the divorce proceeding or repetitive. The declaration was also not filed in support of any

motion or other pending matter, and instead sought to introduce evidence outside of trial proceedings. Because a court is allowed to strike redundant or immaterial matters, and because Overboe's declarations were not in support of pending motions, the district court did not abuse its discretion in striking the declaration.

V

[¶34] Overboe argues the district court abused its discretion by denying her February 25, 2022 motion to amend the findings. In the motion Overboe argues she was not given proper notice of the February 11, 2022 hearing, the divorce judgment did not apply to both parties, and the valuation and division of the marital estate were improper.

[¶35] Under North Dakota Rules of Civil Procedure 52(b) a district court may amend its findings, or make additional findings, and may amend the judgment if a party files a motion no later than 28 days after notice of entry of judgment. Rule 52(b), N.D.R.Civ.P., was derived from F.R.Civ.P. 52(b). "When a state rule is derived from a corresponding federal rule, the federal courts' interpretation of the federal rule may be used as persuasive authority when interpreting our rule." *White v. T.P. Motel, L.L.C.*, 2015 ND 118, ¶ 20, 863 N.W.2d 915. In *Buchl v. Gascoyne Materials Handling & Recycling, L.L.C.*, the federal court for the district of North Dakota stated:

"Like Rule 59, a Rule 52(b) motion is 'not intended merely to relitigate old matters nor are such motions intended to present the case under new theories.' The purpose of a Rule 52(b) motion is to provide the court an opportunity to clarify its findings and correct 'manifest errors of law or fact.' A Rule 52 movant bears a 'heavy burden in seeking to demonstrate clear error or manifest injustices.' Rule 52(b) does not provide an avenue to relitigate issues upon which the moving party did not prevail at trial."

2022 WL 7713418 (internal citations omitted).

[¶36] We review a district court's decision on a motion to amend its findings or judgment under the abuse of discretion standard. *MayPort Farmers Co-op v.*

St. Hilaire Seed Co., 2012 ND 257, ¶ 8, 825 N.W.2d 883. “A court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law.” *Id.*

[¶37] Overboe’s motion to amend the findings was timely. The record shows Overboe received an email from the court clerk regarding the February 11, 2022 hearing. The argument regarding a divorce judgment not applying to both parties has been held as frivolous. The valuation of the marital property was within the range of evidence presented at trial and distribution of the property was based on facts and evidence presented at trial. In her post-trial motion, Overboe did not demonstrate the court clearly erred or manifested injustice in its findings. Therefore, the district court did not abuse its discretion in denying the motion to amend the findings.

VI

[¶38] Overboe argues the district court lost jurisdiction after she filed a notice of appeal and therefore had no authority to grant Buchholz’s April 6, 2022 motion. There, Buchholz moved to strike Overboe’s March 31, 2022 discovery as duplicative, grant Buchholz a protection order against Overboe, and strike from the record a number of Overboe’s filings.

[¶39] “A district court loses jurisdiction over a case when a party files a notice of appeal.” *Rath v. Rath*, 2017 ND 80, ¶ 11, 892 N.W.2d 205. “The jurisdiction of the Supreme Court attaches upon the filing of the appeal. . . . Further, an order entered by the trial court after an appeal has been filed is ordinarily void for lack of jurisdiction.” *Id.* However, “the district court retains certain inherent authority or power, and thus jurisdiction, to address certain collateral matters[.]” *Lessard*, 2022 ND 32, ¶ 23. “Courts have defined a ‘collateral matter’ for which a lower court retains jurisdiction to act after a notice of appeal has been filed as a matter that ‘lies outside the issues in an appeal or arises subsequent to the judgment from which an appeal was taken.’” *Holkesvig v. Grove*, 2014 ND 57, ¶ 16, 844 N.W.2d 557.

[¶40] On April 18, 2022, Overboe appealed from the divorce judgment, the findings of fact, conclusions of law and order for judgment, a letter from Buchholz requesting clarification on property valuations, the order striking Overboe’s February 11, 2022 declaration, the order striking Overboe’s February 17, 2022 declaration and accompanying exhibits, and the order dismissing Overboe’s February 25, 2022 motion to amend findings. On April 25, 2022, the district court granted Buchholz’s April 6, 2022 motion to strike Overboe’s filings and granted a protection order. On May 16, 2022, Overboe filed her second notice of appeal. She appealed from the order granting Buchholz leave to deposit funds and the April 6, 2022 order striking additional filings and granting a protection order.

[¶41] The subject matter of Buchholz’s April 6, 2022 motion is not collateral to issues included with and covered by the orders and judgment in the first notice of appeal. Rather, the matters pending in the district court on the day the notice of appeal was filed were directly related to the divorce itself, and to issues already on appeal. Because the issues covered by the court’s April 25, 2022 order were not collateral matters, the court lost jurisdiction on April 22, 2022, when the notice of appeal was filed. Therefore the April 25, 2022 order granting the motions is vacated as void.

VII

[¶42] Buchholz requests recovery of attorney’s fees based on what he claims is a frivolous appeal. Buchholz argues this is a frivolous appeal because Overboe filed her appeal one day after filing a response to Buchholz’s April 6, 2022 motion and did not inform the North Dakota Supreme Court clerk there was a motion still pending with the district court. He also argues the appeal is frivolous based on *Lessard v. Johnson*, where this Court held it was “nonsensical and frivolous” to argue a divorce judgment does not apply to both parties. 2022 ND 32, ¶ 10. Lastly, he claims the appeal is frivolous because Overboe’s arguments lack relevant supportive case law. Overboe responded with a motion to dismiss.

[¶43] Under N.D.R.App.P. 38, this Court may award attorney’s fees if the appeal is frivolous. *Harty Ins., Inc. v. Holmes*, 2022 ND 45, ¶ 2, 971 N.W.2d 400. “An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which evidences bad faith.” *Id.* This Court has determined arguing a divorce judgment only grants a divorce to one of the parties is sanctionable. *Lessard*, 2022 ND 32, ¶ 10. Although some of the remainder of Overboe’s arguments are weak or poorly supported, they are not frivolous. We therefore order Overboe pay Bucholz \$1,000 in attorney’s fees, and award recovery of double costs.

VIII

[¶44] We have considered the remaining issues and arguments raised by Overboe and conclude they are either unnecessary to our decision or without merit.

IX

[¶45] We affirm the divorce judgment but remand for the district court to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when. We affirm the district court’s order denying Overboe’s motion to amend findings of fact but vacate the April 25, 2022 order granting Jonathan Buchholz’s motion to strike and granting a protection order. We also grant Buchholz’s motion for attorney’s fees and award double costs.

[¶46] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte